

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_  
VICTOR SANTANA,

Plaintiff,

-against-

Case No. 16CV3034(JMF)

SETTLEMENT  
AGREEMENT

JUST SALAD LLC and MAIDEN LANE PROPERTIES LLC,

Defendants.  
\_\_\_\_\_

This **SETTLEMENT AGREEMENT AND RELEASE** (hereinafter "Settlement Agreement") is entered into on the \_\_\_\_\_ date of September, 2016, by and among VICTOR SANTANA ("Plaintiff"), on the one hand, and Just Salad LLC ("Just Salad") and Maiden Lane Properties LLC (collectively "Defendants"), on the other hand (hereinafter collectively the "Parties").

**IT IS HEREBY** stipulated and agreed by and among the Parties as follows:

**WHEREAS** Plaintiff filed the above-captioned action against Defendants for alleged Violations of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181, *et seq.* ("Title III" of the "ADA"), regarding the real property and improvements thereon located in New York County, New York at 100 Maiden Lane (hereinafter "Property"), pursuant to which Plaintiff sought compensatory damages, injunctive relief, attorneys' fees, expenses, and costs;

**WHEREAS** Defendants do not admit, and expressly deny, any violation(s) of any federal, state, or local statute, including, but not limited to, the ADA, and state or municipal fire safety or building code, or any other wrongdoing or liability whatsoever;

**WHEREAS** Just Salad represents that it is agreeing to modify the Property in accordance

with the terms set forth herein;

**WHEREAS** the Parties desire to avoid further expense, time, effort, and uncertainty in regard to this action;

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants and undertaken contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree to the following terms and conditions in full and complete settlement of this action.

**MODIFICATION OF THE PROPERTY**

1, The above recitals constitute part of this Settlement Agreement. Plaintiff alleges in this action that certain physical barriers to access exist at the Property, which restrict and/or limit Plaintiff's access within the Property. In response to and in settlement of the allegations contained in the Complaint and all other allegations brought or which could have been brought in this action with respect to this Property, Just Salad agrees as follows:

- a. Just Salad shall build or purchase a lift with weight bearing capacity of 750 pounds to provide access from the bottom of the stairs inside the front entrance of the establishment to the counter area.
- b. This accommodation shall be fully operational within 12 months of the execution of this agreement by plaintiff.

Within 30 days of the installation of the lift, Just Salad or their counsel shall notify Plaintiff's counsel and shall furnish a photograph(s) of the installed lift.

**DISMISSAL OF COURT PROCEEDING AGAINST DEFENDANTS**

2. In exchange for Plaintiff dismissing the court case proceeding against Defendants styled as SANTANA v. JUST SALAD, LLC et al., Case No. 1:16-cv-03034 (JMF) with

prejudice, which action has already been dismissed by the Court, Just Salad shall pay the settlement amount, as defined below, and make the modification to the property set forth below.

### **SETTLEMENT AMOUNT**

3. The Parties agree that monetary compensation shall be paid in resolution of all claims asserted in this action, pursuant to a separate and confidential letter dated as of the date of this Settlement Agreement and signed by counsel for Just Salad as authorized representative of his client (such monetary compensation being the "Settlement Payment").

### **FEES AND EXPENSES.**

4. Each of the Parties shall bear their own attorneys' fees and costs incurred in connection with or related to the Action not otherwise encompassed by the terms of this Stipulation subject to the provisions of paragraph 8 ; provided, however, that in the event of a breach of this Stipulation, the non-breaching party shall be entitled to seek any fees or expenses incurred, including reasonable attorneys' fees, by reason of efforts to enforce this Stipulation, or the separate letter agreement relating to the Settlement Payment.

### **NON-DISPARAGEMENT**

5. The Parties agree that they will not make any disparaging, denigrating, demeaning or untrue statements about the other party or any person associated with the other party, including any officer, director, member, consultant, expert, or legal representative of the other party with respect to any of the issues raised, or which could have been raised in the above-captioned action.

### **RELEASE OF CLAIMS**

6. In exchange for the mutual covenants and the good and valuable consideration set forth herein, Plaintiff, along with all of Plaintiff's agents, successors, assigns, heirs, officers,

directors, shareholders, employees, members, affiliated entities, along with anyone claiming by or through them, jointly and severally, (collectively the “Releasing Parties”) hereby release, acquit, satisfy, and discharge Defendants, along with their parent companies, subsidiaries, divisions, affiliates, related companies and persons, predecessors, successors, heirs, executors, administrators, assigns, shareholders, members, directors, officers, employees, agents, attorneys, and lessors and/or lessees at the Property (collectively the “Released Parties”), jointly and severally, from any and all claims, causes, causes of action, damages, demands, liabilities, debts, judgments, expenses, equities and any and all other claims or suits of any kind, whether known or unknown, from the beginning of the world to the date of this Settlement Agreement, including, without limitation, any and all claims pursuant to Title III of the ADA regarding the Property (and/or any other federal, state or local law governing physical access features for persons with disabilities at public accommodations, whether before any federal, state or local agency, court of law, or before any other forum) such as the claims that were asserted, or could have been asserted, in the above-captioned action; provided that, this release shall in no way limit Plaintiff’s or the Court’s ability to monitor and enforce Just Salad’s compliance with the terms of this Settlement Agreement.

### **INTEGRATION/SEVERABILITY**

7. This Settlement Agreement, and the letter referenced hereto, constitutes the entire understanding and agreement of the Parties and supersedes all prior or contemporaneous negotiations or agreements (written or oral) and cannot be modified, amended, or revoked except by the express written consent of Parties to this agreement or their counsel with their client's express consent.

8. Nothing in this Settlement Agreement shall be construed to amend or modify the provisions of the lease agreement for the Property between Defendants. If any provision of this Settlement Agreement or any part of any provision of this Settlement Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, such shall not affect the validity of any other provision(s) or part(s) of this Settlement Agreement. The defendants alone reserve the right to enforce any rights arising under the lease as between themselves without affecting the plaintiff in any manner.

### **CONSTRUCTION/AMBIGUITIES**

9. The Parties acknowledge that each Party has reviewed and participated in the drafting of this Settlement Agreement and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in its interpretation.

### **WAIVER**

10. The failure of any party to assert any of its rights hereunder shall not constitute a waiver of such rights.

### **GOVERNING LAW**

11. This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of New York and, where applicable, the ADA without regard to principles of conflicts of law. Any claim regarding this Settlement Agreement, or alleging a material breach of this Settlement Agreement, shall be filed in the above-styled Court, if it has jurisdiction, or in the Supreme Court in and for New York County, New York.

### EXECUTION

12. The Parties have read and understood this Settlement Agreement, have had the opportunity to discuss same with legal counsel, and have voluntarily agreed to sign the Settlement Agreement and agree to be bound thereby.

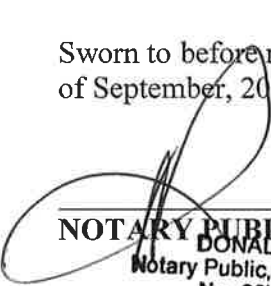
13. Each person executing this Settlement Agreement on each Party's behalf has been duly authorized to sign on behalf of the respective party and to bind each to the terms of the Settlement Agreement.

14. The Parties agree that this Settlement Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute but one and the same instrument. The Parties agree and acknowledge that a photocopy, facsimile, copy, or scanned copy of an executed signature may be used in place of an original executed signature for any purpose.

VICTOR SANTANA



Sworn to before me this 14<sup>th</sup> day  
of September, 2016.

  
**NOTARY PUBLIC**  
DONALD J. WEISS  
Notary Public, State of New York  
No. 02WE6117459  
Qualified in Nassau County  
Commission Expires October 25, 2016

JUST SALAD LLC

\_\_\_\_\_  
By: Nick Kenner, Managing Member

Sworn to before me this \_\_\_\_ day  
of September, 2016

\_\_\_\_\_  
**NOTARY PUBLIC**

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VICTOR SANTANA

Sworn to before me this \_\_\_\_ day  
of September, 2016.

\_\_\_\_\_  
NOTARY PUBLIC

JUST SALAD LLC

  
By: Nick Kenner, Managing Member

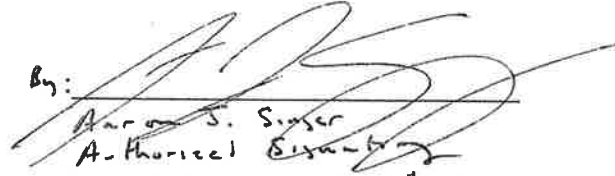
Sworn to before me this 13 day  
of September, 2016

  
\_\_\_\_\_  
NOTARY PUBLIC

SAMI MILUSH  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01M1628442  
Qualified in Bronx County  
Commission Expires June 17, 2017

MAIDEN LANE PROPERTIES, LLC

By:

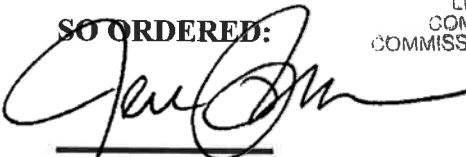
  
Aaron S. Singer  
A. Theissel Signature

Sworn to before me this 12<sup>th</sup> day  
of September, 2016.

  
NOTARY PUBLIC

ARMINA THOMAS  
NOTARY PUBLIC STATE OF NEW YORK  
LIC. #01TH6166157  
COMM. EXP. 05/21/2019  
COMMISSION IN QUEENS COUNTY

SO ORDERED:



U.S.D.J.

September 15, 2016

Victor Santana

v.

Just Saled LLC  
and Maiden Lane  
Properties LLC

Settlement Agreement